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EJECTMENT OF RYOTS (OR TENANTS) OF OLD WASTE.

The question whether suits for ejectment of ryots of "old waste" are triable by the Collector under the provisions of the Estates Land Act or are cognizable by the ordinary Civil Courts, is one which cropped up time and again before the High Court and there has been considerable conflict of opinion on the question. The matter is one of great importance not merely from the academical point of view but by reason of the fact that the period of limitation for such a suit if triable by the Collector is only one year from "the date on which the right to eject accrued" under article 19, of schedule A to the Estates Land Act, whereas under the Limitation Act the landholder will have a period of 12 years if the suit is cognizable by the Civil Courts. The general plan and arrangement of the Estates Land Act will lead one to the conclusion that such suits are cognizable by the Civil Courts alone; and, although the proviso added to S. 153 by Act IV of 1909 has been the subject of discussion in several cases and different conclusions have been drawn from it by different learned Judges, it seems to us with due deference to the views of the learned Judges who took a contrary view that the above proviso has no bearing on the question of jurisdiction and that the only conclusion to which Ss. 153, 157, 189 and the schedules attached to the Act will lead is that the Civil Courts alone have jurisdiction over such suits.

Ss. 153 and 157 find a place in the chapter relating to ejectment and S. 189 appearing in the chapter relating to jurisdiction, read with the schedules, contains the provisions conferring jurisdiction on Revenue Courts; and as laid down in several cases the jurisdiction of Civil Courts cannot be ousted by mere implication unless such jurisdiction is expressly conferred by any provision of law on the Revenue Courts. The provisions of Chapter X relating directly to ejectment are (1) S. 151 which lays down the only ground on which an occupancy ryot may be ejected, (2) S. 153 (as the marginal note clearly

states) laying down the *grounds* on which a non-occupancy ryot may be ejected, (3) S. 157 laying down that a tenant of old waste cannot be ejected on grounds other than those mentioned in S. 153 and lastly, (4) S. 158 which lays down the grounds on which a tenant of private land may be ejected. All these provisions relate merely to the *grounds* on which the respective occupants may be ejected and though we find in Ss. 151 and 153, the words "before the Collector" also, it is not by virtue of these sections that jurisdiction is conferred on the Collector but by virtue of S. 189 and the schedules which deal exhaustively with the question of jurisdiction and set forth all the classes of suits and applications triable by the Collector. The above words "before the Collector" in the above sections are therefore to be treated as mere surplusage and this point, it, is submitted, was not sufficiently pressed on the attention of the learned Judges, who had to deal with the question. If this view is accepted, the whole discussion about the proviso to S. 153 whether it has the effect of taking the case of non-occupancy ryots holding under an expired lease granted before the Act, out of the jurisdiction of the Collector, seems to be entirely foreign to a consideration of the question at issue. It will be apparent that the proviso was merely intended to save the ordinary liability of such ryots to be ejected (whether in the Civil Courts or in the Revenue Courts, being untouched by the proviso and having to be determined apart from it) and it will therefore serve no useful purpose to discuss this proviso in a consideration of the question of the *Forum*. We have therefore to fall back upon Ss. 153, and 157 of the Act, which deal with "non-occupancy ryots" and "tenants of old waste" respectively. It cannot be disputed for a moment that tenants of old waste are a class of non-occupancy ryots. S. 157 dealing expressly with tenants of old waste must therefore be deemed to apply to this particular class of non-occupancy ryots, S. 153, applying to other classes of such ryots. This seems to be the view taken by Mr. Ramadas also in his commentary on the Act (at page 591). This argument is also in harmony with the division of ryots land, which is recognised by the Act, into "old waste" and "ryoti land not being old waste." And suits under S. 157 which expressly relates to tenants of old waste, not being suits mentioned in schedule A of the Act, would then be clearly cognizable by Civil Courts alone. The non-

mention of suits under S. 157, in schedule A of the Act, seems to be conclusive on the question. The only argument which can be adduced in opposition to this is that S. 153 deals with all classes of non-occupancy ryots including ryots or tenants of old waste. If this argument is sound there would be no necessity for S. 157 at all in the Act and a construction which involves the attributing of such an anomaly to the Legislature ought surely to be avoided and some meaning and purpose must be assigned to every section of the Act.

A further argument is open on the language of the two sections read together, *viz.*, there being several classes of "old waste," S. 157 is intended to apply to one class and S. 153 to other classes, and some support may be sought for it in the use of the word "tenants" in S. 157 whereas the word "ryots" is used in S. 153. The answer to this is that there is no such distinction drawn in the Act between tenants and ryots of old waste, but on the other hand the two words are used indiscriminately in several sections of the Act with reference to the same class of persons and the general trend of the Act also is against such a distinction.

The conclusion is therefore irresistible that suits in ejectment against tenants or ryots of old waste are cognisable by the Civil Courts alone, but as the contrary view is taken by several learned Judges of this court, it may be useful to examine the decisions.

The first case in which the question arose was the case reported in *Vuppuluri Atchayya* v. *Kanchimarti Venkatasita Ramachandra Row* [1] in which it was held (at page 77) that such suits are cognizable by the Collector. The judgment is a short one and their Lordships Sankara Nair and Sadasiva Iyer, JJ. in the course of their judgment state that "under section 157 a suit to eject him (a tenant of old waste) may be brought before a Collector" &c. This, it is submitted with all deference to their Lordships, is begging the question. Lower down there is an observation that "if that is so, *i.e.* (if the suit cannot be brought before the Collector as contended by the Respondents' learned vakil) we see no other section which gives a right of suit." The answer to this is that it is neither S. 153 nor S. 157 that gives the land-holder his *right to eject* but S. 9 which is the general section impliedly giving such right, the former sections merely laying down the *grounds* on which particular classes of ryots may be ejected. The Judgment proceeds on a construction of the Proviso added

1. (1912) 13 M. L. T 60.

to S. 153, which as already submitted has little bearing on the question of jurisdiction and in no event is conclusive on the question, and it entirely overlooks the argument based on the non-mention of S. 157 in article 19 or any other article of schedule A of the Act. The above decision, it is submitted, cannot therefore be regarded as settling the matter. The next case is the one reported in *Sunkara Venkata Ratnam* v. *Sri Ràja Varada Raja Apparow* [1], where their Lordships, Oldfield and Tyabji, JJ., came to opposite conclusions, the former holding that the Revenue Court has jurisdiction and the latter taking the contrary view. It is unfortunate that though the matter went up in appeal before three learned Judges, the appeal was decided on another ground and this question of Jurisdiction was not considered by their Lordships.

Oldfield, J., discusses the present question with reference to the provisions of S. 153 alone of the Act. The learned Judge states that the section relates to two matters, *viz.*, (1) it prescribes the Collector's court as the tribunal for all ejectment suits against them (non-occupancy ryots) and (2) it enumerates the grounds available, and proceeds, "The point is that the addition (Proviso) deals with liability to ejectment not the tribunal which is to enforce it. The preceding provision for the Collector's Jurisdiction is therefore unaffected and the result is.........to make suits thereon cognizable by the Collector." With all respect to the learned Judge, it must be said that there is an apparent inconsistency between the two sentences and it is submitted that the latter proposition does not in any way follow from the former and the former expresses the more correct interpretation of the proviso, *viz.*, that the proviso does not deal with the tribunal, for the obvious reason that this question is specially dealt with by S. 189 and the schedules. Though the section lays down that the suit is to be filed before the Collector, such a statement is, as already stated, quite unnecessary and must be treated as surplusage. Neither the clauses of the section nor the proviso should therefore be resorted to on this question of jurisdiction. Further there is in the judgment no discussion of S. 157 as to what classes of tenants it relates to and no reference to the non-mention of this section in schedule A of the Act. It is submitted that the view taken by the other learned Judge in this case is the sounder

1 (1915) 29 M. L. J. 184.

view and the same view was taken by Spencer, J., also in the case reported in. (*Ponnusami Padayachi* v. *Karuppadayan* [1]) Miller, J., the other learned Judge deciding the case on other grounds. Both Spencer and Tyabji, JJ., in the cases referred to above go into the matter very elaborately and point out the anomalies that would result from the contrary view and their reasoning appears if we may say so, to be quite unexceptionable.

In yet another case which came before Oldfield and Sadasiva Iyer, JJ, reported in *President, District Board of Tanjore* v. *Annasami Thondaman* [2], this very point had to be decided but the question considered and decided there was as between S. 163 on the one hand and Ss. 153 and 157 on the other, which was applicable to the suit in question and their Lordships held that the suit to eject a ryot of old waste was triable by the Revenue Court *under the latter two sections.* The question as to what class of cases S. 153 applies to and to what cases S. 157 applies does not appear to have been raised in that case and there was no discussion of S. 157 separately. It is therefore submitted that this case is no authority on the question now under discussion. Quite recently the matter came up directly before another division Bench composed of Abdur Rahim and Bakewell, JJ., in S. A. Nos. 761-763 of 1916 and their Lordships felt that the preponderance of authority was in favour of the view that Revenue Courts have jurisdiction and the question was not allowed to be argued.

From the above discussion of the decisions bearing on the question it will be apparent that it is not quite correct to state that there is any such great preponderance of authority in favour of either view and the matter is one which requires reconsideration by a Full Bench in view of the conflict of authority and in view of the hardship and inconvenience to landholders arising from the view that Revenue Courts alone have jurisdiction. The matter, no doubt, might be set at rest by the Legislature itself making it clear what suits S. 157 was intended to cover and, if S. 157 was not intended to apply to any other suits besides those covered by S. 153, by abrogating the section altogether. If on the other hand, S. 157 was intended to govern a class of ryots different from those governed by S. 153, the Legislature will do well to define such class and if it is intended further that such suits also should be tried by the Collector,

1. (1915) I. L. R. 38 M. 843.

2. (1916) 35 I. C. 121.

to mention S. 157 also in schedule A of the Act. It is difficult to gather what the policy of the Act is with respect to this question as with respect to several other matters. It seems therefore a case for the interference of the Legislature as the intention is not very clear from the provisions as they stand now and in any event there should be an authoritative pronouncement setting at rest once for all the conflict of decisions on the question.

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High Court Vakil.

SUMMARY OF ENGLISH CASES.

Bowman v. **Secular Society Limited**: L. R. (1917) A. C. 406.

Company—Objects—Promotion of anti-Christian objects—Legality of the company — Blasphemy — Capacity of anti-Christian Company to receive gifts—Validity of bequests to such Company—Whether certificate of incorporation conclusive as to the legality of objects.

Where the object of a company incorporated under the Company's Acts is to promote the principle that human conduct should be based upon natural knowledge and not upon supernatural belief and that human welfare in this world is the proper end of all thought and action and thus involved a denial of Christianity, a bequest to such company is not illegal and should be upheld as valid.

Biggs v. *Hartly*, 19 L. J. Ch. 416, *Curan* v. *Milburn* L. R. 2 Ex. 23 overruled.

The crime of blasphemy is not constituted by a temperate attack on religion in which the decencies of controversy are maintained. To constitute the offence there should be scurrility or profanity in the propagation of anti-Christian doctrines.

The certificate of incorporation of a company is not conclusive as to the legality of its objects.

Lord Finlay (Lord Chancellor) differed from the other Lords and held that the bequest to such company was invalid on the authority of *Curan* v. *Milburn* and *Biggs* v. *Hartley* which his Lordship held was still good law.

In the words of Lord Sumner "the phrase Christianity is the Law of England is really not law; it is rhetoric."

Mclaren v. Thomson: (1917) 2 Ch. 261.

Company—Meeting—Voting by proxy—Provision for lodging proxies two days before Meeting—Adjourned Meeting.

Under the articles of a Company, the instrument appointing a proxy was to be deposited at the Registered Office of the Company not less than two clear days before the day for holding the meeting at which the person named in the instrument proposed to vote. *Held* that proxies lodged after the date of an original meeting, but more than two days before the day fixed for an adjournment thereof, could not be used for the purpose of voting at the adjourned meeting.

In re **Crispin & Co.'s Trade Mark**: (1917) 2 Ch. 267.

Trade Mark—Registration—Geographical limits, restriction of.

Except in the case of identical or nearly identical, marks registered under S. 21, there is no jurisdiction under the Trade Marks Act, 1905, to impose as a condition of registration that a mark shall only be used in a particular country.

Bruty v. Edmundson: (1917) 2 Ch. 285.

Taxation — Trustee-solicitor — Charges of misconduct—Defence—Instructions for Brief—Leading Counsel—Fees—Supreme Court Rules, O. 45, R. 27, Sub Rr. 29 and 38.

A plaintiff who has failed to substantiate allegations of misconduct against a defendant, cannot escape liability to pay costs reasonably incurred by that defendant in relation to those charges of which the truth or falsity had to be determined at the trial, by abstaining from claiming any relief against the defendant and by insisting in the pleadings that he was sued only as a trustee. In taxing the costs of such a defendant he should be allowed the cost of briefing the Counsel.

Levy v. Goldhill: (1917) 2 Ch. 297.

Damages—Commission agent—Contract for indefinite period—Determination of contract—Notice, unnecessary—Right to commission—Measure of damages.

The plaintiff carried on various businesses of his own, and as he travelled about the country in connection with them he also obtained orders for other traders on terms of commission. The defendant agreed with the plaintiff as follows: " I agree to pay

you half profits on receipt of orders, provided the customer is good. Same applies to repeats on any accounts introduced by you." The defendant subsequently terminated the relation constituted by the agreement without giving any notice. In a suit for damages for breach of the agreement and for wrongful dismissal.

Held, (1) that there was no employment of the plaintiff by the defendant and that therefore the defendant was entitled to terminate their relations without notice ;

(2) that, notwithstanding the termination of the relationship, the plaintiff was entitled to commission on orders whenever received, if they came from customers introduced by the plaintiff.

Stebbing v. Liverpool and London and Globe Insurance Co.: (1917) 2 K. B. 433.

Provision for reference to arbitration in respect of differences arising out of policy—Untrue statement in proposal—Burden of proof.

Under a policy of insurance, all differences arising out of the policy were to be referred to an arbitrator for decision. The policy also contained a recital that the assured had made a proposal and declaration as the basis of the contract, and a clause to the effect that compliance with the conditions indorsed on the policy should be a condition precedent to any liability on the part of the insurers. One of the conditions provided that if any false declaration was made or used in support of a claim all benefit under the policy should be forfeited. In answer to a claim by the assured, the insurers pleaded that the statements in the proposal and declaration were false. *Held* that the burden of proving that the statements were untrue lay upon the insurers and that the truth or untruth of the statements was a matter for reference to the arbitrator.

Macmillan v. London Joint Stock Bank: (1917) 2 K. B. 439.

Banker and customer—Cheque—Alteration of amount—Space for amount in words left blank—Mandate of customer—Negligence—Bills of Exchange Act 1882, Ss. 9, sub-ss. 2 and 20.

If a person signs a piece of paper and gives it to an agent with the intention that it shall in his hands form the basis of a negotiable instrument, he is not permitted to plead that he limited the power of his agent in a way not obvious on the face of the instrument,

The mere fact that a cheque is so drawn that spaces left in it can be utilised for forgery is not by itself any violation of the duty which a customer owes to his banker or any evidence of negligence to go to a jury. Nor does the fact that the space for words in the cheque has been left blank by the drawer make any difference. A customer owes a duty to his banker not to mislead, but such duty is not broken by negligently drawing a cheque in such a manner as affords another person an opportunity to commit a fraud and thus mislead the banker.

D. P. Anderson & Co. Ltd. *v.* **The Lieber Code Co.**: (1917) 2 K. B. 469.

Copyright—" Original literary work"—Combination of words so as to form a Code—Breach of copyright—Form of decree.

Plaintiffs were the publishers of a code of made-up words considered to be suitable for cabling purposes. Each word, which of itself was meaningless, consisted of five letters only, and differed from every other word in the code. In the preparation of the code all unpronounceable words as well as those which were easily liable to error in transmission were omitted. Plaintiffs claimed an injunction, damages and further relief in respect of an infringement of the copyright in this code by the defendants." *Held*, that the Code was an " original literary work " and could be the subject of a copyright. The plaintiffs were granted an order to the following effect :—A perpetual injunction restraining defts., their agents and servants from printing, selling or exposing for sale, copies of the code or any other work containing 5 letter words copied or taken or colourably imitated from plff's. code; the delivery up on oath of all copies of the code in the defendants. possession or in that of their servants or agents within the United Kingdom, containing 5 letter words etc., and also all plates etc, within the United Kingdom for the purpose of producing the same.

Panoutsos v. **Raymond Hadley Corporation of New York**: (1917) 2 K. B. 473.

Contract—Cancellation of—Waiver of breach—Reasonable notice, if breach is relied on as ground for cancellation.

Under a contract for sale of goods in several shipments, "each shipment was to be deemed a separate contract" and payment should be made by "confirmed banker's credit."

The buyer opened a banker's credit which was not in fact, "confirmed"; and the seller, with notice of that fact, made some shipments and received payments therefor by means of the credit, and also obtained from the buyer an extension of time to Nov. 30 for shipment of the balance of goods. On Nov. 25, the seller purported to cancel the contract as to the shipment of the balance of the flour, without any previous notice, upon the ground that the credit was not in accordance with the contract. *Held*, that there was no valid cancellation of the contract. The seller, by waiving for a time the breach of the condition as to a confirmed credit, was not thereby bound to act upon that credit up to the end of the contract, but he was not entitled to cancel the contract without giving the buyer reasonable notice of his intention to cancel so as to give the buyer an opportunity of complying with the condition.

Matter *v.* **Whale**:—(1917) 2 K. B. 480.

Sale of Goods Act, 1893 (56 and 57 Vic. C. 71) S. 25 (2).—Sale of goods—Conditional agreement to buy—Buyer in possession—Sale to third person—Rights of second purchaser.

Plaintiff entered into an agreement in writing with one T. whereby the latter agreed to sell and the plff. to buy a plot of land for £ 385 subject to the solicitor's approval of title; and in consideration of the aforesaid transaction plaintiff agreed to sell and T. agreed to buy a motor car for £, 300 the two purchases to be carried out simultaneously. Plff. gave possession of the motor car to T. "on loan," none of the purchase money having been paid and T. sold it to defendant who bought it in good faith and without knowledge of any right of the plaintiff. Subsequently plaintiff's solicitors refused to approve of the title to the land. In an action for recovery of possession of the car *held* that the agreement as to the sale of the motor car did not confer a mere option to T. to buy it but was a conditional agreement to sell; that a conditional agreement came within S. 25 sub-s. 2 of the sale of Goods Act, 1893; and that T. had agreed to buy the car within the meaning of that section and the deft. had acquired a good title thereto.

Rex *v.* **Army Council**: (1917) 2 K. B. 504.

Mandamus—Army Council—Court of inquiry—Irregular proceedings—Jurisdiction—Appropriate remedy available—Discretion—Ineffective remedy.

On an application for a writ of *mandamus* to the Army Council commanding them to cause a Court of Inquiry which had reported unfavourably on the conduct of the applicant to re-assemble to hear and determine his case according to law, *held* that the application could not be sustained, because (1) the Court would not interfere in matters relating to military law prescribing rules for the guidance and discipline of military officers; (2) another and an equally convenient, beneficial and appropriate remedy was open to the applicant under S. 42 of the Army Act; (3) the power of the Army Council to assemble a court of inquiry was a discretionary power, and the Court would not order an authority to exercise a discretion in a particular way; (4) the remedy by mandamus, if available, would in the circumstances, be ineffective.

The issue of the writ of mandamus is in the discretion of the Court and not a matter of right. The Court would be slow to interfere where the only complaint is that the rules of procedure have not been strictly and literally followed.

Cheater *v.* **Cater**: (1917) 2 K. B. 516.

Nuisance—Landlord and tenant—Overhanging yew trees—Death of cattle—Liability of landlord.

A landlord let to the tenant a field. At the time of the letting there was a yew tree growing on the ground retained by the landlord and not let. At the time of the demise the tree, although it overhung the demised property was harmless, but during the tenancy it grew and came within the reach of horses. The tenant's mare ate of the leaves and died. In an action for damages by the tenant against the landlord: *Held*, by *Lord Coleridge, J.* that the landlord was liable as the case came within the principle of *Rylands* v. *Fletcher* (1868) L. R. 3 H. L. 360.

(*Held*, by *Rowlatt, J.*) that the tenant took the land as he found it and the landlord was not liable.

William France. Fenwick & Co. Ltd. *v.* **North of England Protecting and Indemnity Association**: (1917) 2 K. B. 522.

Insurance—Marine—Insurance against loss through hostilities—Damage to ship by running on wreck of vessel sunk by enemy submarine.

Plaintiffs, the owners of the steamship *Sherwood*, were insured by a policy issued by the defendants which was expressed to cover only the risks of capture, seizure, and detainment by the

king's enemies etc., and all risks excluded from an ordinary policy by the F. C. and S. clause. The policy also provided that the ship was to be deemed to be fully insured by an ordinary policy against all other risks. The *Sherwood* ran upon, and was damaged by the submerged wreck of another vessel which had been torpedoed and sunk in shallow water by an enemy submarine. There had been no time to mark the spot where the wreck lay and there was no negligence. In an action to recover under the policy, *held* that, having regard to the rigid rule of insurance law that one must seek the proximate cause alone, the damage to *Sherwood* was not proximately caused by the perils insured against in the policy and that the plaintiffs were not entitled to recover.

Young v. *Grote* (1827) 4 Bing. 253, not followed.

Pawson, *In re*: (1917) 2 K. B. 527.

Bankruptcy—Surety's claim—Debt proveable in bankruptcy.

A surety for a bankrupt is entitled to prove for the full amount of the actual and contingent liability incurred by him on behalf of the bankrupt.

Jacobs *v.* **Davis**: (1917) 2 K. B. 532.

Contract—Marriage—Breach—Engagement ring—Duty to return.

Where an engagement ring is given by a man to a woman, there is an implied condition that the ring shall be returned if the engagement is broken off. The result is the same whether the transaction is viewed as a pledge or as a conditional gift.

Unione Stearinerie Lanza and Weiner, *In re*: (1917) 2 K. B. 558.

Costs—Power of arbitrator to order party to give security for costs—Arbitration Act, 1889, S. 2.

An arbitrator under a submission by agreement out of Court has no power to make an order for security for costs.

Neville *v.* **London Express Newspapers Ltd.**, (1917) 2 K. B. 564, C. A.

Maintenance of suit—Liability of Maintainer—Action successful—Effect of.

An action for maintenance of a suit is competent though the maintained action has been decided in favour of the plaintiff in that action.

Nesbitt *v.* **Mablethorpe Urban Council**: (1917) 2 K. B. 568.

Seashore—Sandhills—Formation by alluvion of the sea—Ownership—Sewer's Act, 1833 (3 and 4 Will. 4 Ch. 22) Ss. 10 and 47—Effect of.

Land, not suddenly left derelict, but formed by alluvion of the sea, imperceptible in progress, belongs to the owner of the adjoining demesne lands, and not to the Crown. Although the management of sandhills formed by forces of nature above high-water mark adjoining the sea-shore is vested in the Commissioners of Sewers by S. 47 of the Sewers Act, 1833, that Section does not vest the property in the sandhills in the Commissioners. It is quite open to private persons to acquire a title by prescription to the sandhills by exercising acts of ownership thereon, for the ordinary prescribed period, notwithstanding the fact that the Commissioners of Sewers had refused to allow them or their lessees to erect permanent strutures thereon without licence.

Mackusick Carmichael: (1917) 2 K. B. 581.

Landlord and tenant—Covenant against Sub-letting by lessee or assigns—Further sub-lease by sub-lessee without consent—Liability of lessee.

Where a lessee who has covenanted for himself and his assigns that he will not sub-let or part with possession of the premises without the consent of the lessor, sub-lets them, the lessor cannot if the sub-lessee further sub-lets without his consent, complain of such further sub-letting as a breach of covenant by the lessee. A sub-lessee is not an assign within the meaning of the covenant.

Continho Caro and Co. *v.* **Vermont & Co.** (1917) 2 K. B. 587.

Alien Enemy—Enemy firm—Order of Board of Trade to wind up business—Controller—Power of, to sue for debts in name of firm—Trading with the Enemy (Amendment) Act, 1916, *S.* 1 *Sub-s.* 2.

Under S. 1 of the Trading with the Enemy (Amendment) Act, 1916, the Board of Trade made an order requiring the business carried on in the United Kingdom by a firm of Enemy Nationality to be wound up appointing a Controller and conferring on him power to sue in the name and on behalf of the firm.

In a suit by the Controller on behalf of the firm for recovery of debts which became due before the outbreak of war, he is not liable to be met by the defence that the plaintiffs are an enemy firm.

S. S. "Plata" v. Ford & Co., (1917) 2 K. B. 593.

Charterparty—Demurrage—Principles, regulating payment of—Time when begins to run—Arrival of ship in port of destination—Detention, unavoidable—Uselessness of arrival, if an excuse for non-arrival.

The general principle applicable to cases where demurrage is claimed, is this: It is the duty of the vessel to arrive at the place of destination, whether that place is a port, a roadstead, a dock or a berth. It is the duty of the charterer to be ready for that vessel when she arrives, and to proceed to discharge her if she is ready in accordance with the terms of the charterparty. But, speaking generally, the vessel must first of all arrive. Any obstacle that prevents the vessel arriving is for the vessel's account and not for the charterer's account. The delay so occasioned must be borne by the ship-owner and not by the charterer.

That is equally true whether the obstacle is a physical obstacle or a legal obstacle or a restraint of princes.

T. and J. Harisson v. Knowles and Foster (1917) 9 K.B. 606.

Contract of sale—Ship—Incorrect statement as to dead-weight capacity—Condition or warranty—Non-liability for errors of description—Liability of vendor.

The defendants wished to sell 2 steamships which were built to carry passengers and cargo. In furtherance of this object, they prepared written particulars of the ships and handed them to a broker who in turn placed them before the plaintiffs. Thereupon the plaintiffs bought the steamships for 10,000 £ each. In the particulars prepared by the defendants the steamships were described as having a dead-weight capacity of 460 tons. The document also contained these words: "Not accountable for errors in description." A memorandam of the contract was drawn up by Mr. Taylor and signed by him on behalf of the plaintiffs and by the defendants. After the ships were delivered to and accepted by the plaintiffs, it was discovered that the dead-weight capacity of each ship was only 360 tons. In an action by the plaintiffs to recover damages for a breach of a condition of the contract, and alternatively, for breach of warranty.

Held, that the memorandum was not intended by the parties to contain all the terms of the contract, and that the statement as to the dead-weight capacity was a term of the contract; that the discrepancy between the statement and the fact was a difference of degree and not of kind, and that the statement was therefore a warranty and not a condition; and that, the statement being a warranty, the defendants were not liable for breach of warranty by reason of the words, "not accountable for errors in description."

The Petone: (1917) P. 198,

Maritime Lien—Wages of seamen—Master's disbursements—Discharge of lien by volunteer after sale of ship—Right to subrogation.

Persons in the position of volunteers who make payments in discharge of seamen's wages and master's disbursements which constituted a maritime lien on the ship do not thereby acquire the lien which the seamen and master had in respect thereof.

JOTTINGS AND CUTTINGS.

London Magistrates, and Literature.—The crowning glory of the London Magistracy, so far as its literary associations are concerned, is Henry Fielding, who, through the influence of Lord Lyttelton, became a Magistrate at Bow Street in 1745, and who like Dickens, may be counted a great law reformer as well as a great novelist. Among the reforms he advocated in his famous tract on 'The Causes of the Increase in Robbers' was the restriction of the sale of intoxicating liquors to children—a change which, though obviously beneficial, has been introduced only within the last few years. No man ever strove more valiantly to equalise the administration of the law. He makes Judge Squeezum, who figures in one of his plays, cynically say, 'The laws are turnpikes only made to stop people who walk on foot, and not to interrupt those who drive through them in their coaches.' A century later the Metropolitan Bench narrowly missed the distinction of numbering another great novelist among its members. Thackery, who was called to the Bar at the Middle Temple in 1848, was encouraged by Monckton Milnes to entertain the idea of becoming like Fielding, a London Magistrate. How the project failed is explained in a letter he addressed to his influential friend soon after he was called;

You are a good and lovable adviser and M. P., but I cannot get the Magistrate's place, not being eligible. I was only called to the Bar last year, and they require barristers of seven years' standing. Time will qualify me, however, and I hope to last six years in the literary world. . . If I could get a place and rest I think I could do something better than I have done and leave a good and lasting book behind me; but Fate is overruling.

Fate, in truth, was never more kind, for although 'Vanity Fair' had recently been completed when Thackeray penned these lines, 'Pendennis' and 'Esmond' had yet to be written, and they might never have been started if their author had been provided with a secured income.—*The Law Journal, August 18, 1917.*

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The Nestor of the Law.—Lord Halsbury, who will complete on Monday his ninety-fourth year, has broken yet another record in the annals of the Woolsack. The palm for longevity among the Lord Chancellors previously belonged to Lord St. Leonards, who passed away at the age of ninety-three. According to the reference books—even according to Atlay—our 'Grand Old Man' of the Law is completing not his ninety-fourth year, but his ninety-second. The records of Merton College, Oxford, where he graduated in 1845, and of the Inner Temple, where he entered as a student in 1846, make it clear, however, that he was born not in 1825 but in 1823. It is recorded of Lord St. Leonards that he preserved his vigour to such an extraordinary degree that after he had become a nonagenarian he would vault the gates in the grounds of his country house rather than allow the bailiff to open them for him. Lord Halsbury's vitality, though it may not be manifested in precisely the same manner, is quite as remarkable as Lord St. Leonards,' and the profession, to whose annals he has made so rich and varied a contribution during the sixty-seven years he has been connected with it, hope to enjoy for many a year yet the pleasure of wishing him on September 3 many happy returns of the day.—*The Law Journal, September 1, 1917.*

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Horace Walpole and the law:—Lawyers take a legitimate pride in the fact that some of all the greatest of English men of letters Bacon, Feilding, Scott and Macaulay are, perhaps, the most famous—have belonged to the practising ranks of their profession. To some, however, it may be a chastening remembrance that other famous authors have addressed themselves to the study of the law and found it so distasteful that they promptly abandoned it.

Gray, Chatterton, Borrow, Dickens, Disraeli and Meredith are to be numbered among the classic writers who have begun a connection with the legal profession without completing it. To this less gratifying company may be added Horace Walpole, the tercentenary of whose birth occurred on Monday. He was entered at Lincoln's Inn in 1731, his father, who was Prime Minister at the time, intending him for the law. "But", says Walpole in his 'Short Notes', 'I never went thither, not caring for the profession.' Not that he appears to have entertained any objection to it on general grounds. When Chatterton submitted some extracts from his Rowley poems to him, he wrote him a letter—so he tells us—'with as much kindness and tenderness as if he had been his guardian' advising him to stick to his profession. Chatterton might, perhaps, have been less disinclined to follow Walpole's advice if the Bristol attorney to whom he was articled had been less hostile to his literary efforts. It is recorded that his unsympathetic master was wont to search the drawer of the youthful poet's desk and tear up any manuscripts not directly connected with the business of the office. It is hardly likely that the fastidious Walpole, if he had overcome his dislike of the law, would have made a considerable figure at the Bar. 'He was drawn by some strange attraction,' says Macaulay, 'from the great to the little, and from the useful to the odd.' That is certainly not the type of mind of which successful advocates are made. But though he despised the law, he was not indifferent to its acts. We have it on the same great authority, in one of the most famous of his antithetical passages, that Walpole 'scoffed at the practice of entail, and tasked the ingenuity of conveyancers to tie up his villa in the strictest settlement.' The purchase of a house in Berkeley Square not the acquisition of the famous residence at Twickenham, which Macaulay derides as the 'grotesque house with the pie-crust battlements'—involved him in a Chancery suit. 'He was too adroit, however'—so Mr. Austin Dobson says—'to allow this to degenerate into an additional annoyance, and managed to turn what promised to be a tedious course of litigation into a combat of courtesy.' A man who could turn a Chancery suit, especially in those days, into a 'combat of courtsey' might, after all, have made an ideal equity lawyer of the old school, though nothing, perhaps would have so offended the dilettante of Strawberry Hill as the suggestion that he was

capable of filling such a part. *The Law Journal, September 29 1917.*

BOOK REVIEW.

INTRODUCTION TO JURISTIC PSYCHOLOGY, *by Prabodh Chandra Bose. M. A., B. L., 1917. Thacker Spink & Co., Calcutta.*

It is not easy to understand the 'psychology' of this work and though we appreciate the attempt of the author in his Foreword to the book to disarm criticism on the ground of its imperfections, we cannot help feeling that the author greatly exaggerates the importance of his subject when he wants to erect 'juristic Psychology' into a 'science'. More than one half of the work is taken up with what may be regarded as rough notes on several topics of general Psychology and in the later portion, the 'juristic' branch is presented under the heads of—i. Narration of the witness to the Judge and the Jury, the process of making it recorded evidence. ii. Psychology of judgment, Judicial Truth, Judge's mind. iii. Psychology of crimes. iv. Psychology of Admission, Confession, Accomplice-evidence, and Behaviour as circumstantial evidence. v. Legal consciousness, Psychology of some concepts relevant in law. vi. The plaintiff's mind. The Prosecutor's mind. The defendant's mind. Legal Practitioner's mind. Legislation. Relation between the Judicial and the Executive. Quite a variety of matters are touched on and there are some interesting suggestions and reflections here and there but the pages are largely filled with quotations from a number of writers, known and unknown. The author deserves credit for bringing them together in some connected form and the book certainly affords interesting reading.

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